

रजिस्टर्ड नं० पी०/एस० एम० 14.



राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, सोमवार, 30 अप्रैल, 1979/10 वैशाख, 1901

हिमाचल प्रदेश सरकार

हिमाचल प्रदेश विधान सभा सचिवालय

अधिसूचना

शिमला, 27 मार्च, 1979

संख्या 1-32/79-वि०स०.—हिमाचल प्रदेश प्रक्रिया एवं कार्य संचालन नियमावली, 1973 के नियम 135 के अन्तर्गत 'दी हिमाचल प्रदेश कोऑपरेटिव लैंड डेवलपमेंट

बैंक्स बिल, 1979, (बिल नं० 2 आफ 1979) जो हिमाचल प्रदेश विधान सभा में 27 मार्च, 1979 को पुरःस्थापित किया गया है, सर्व-साधारण की सूचनार्थ राजपत्र में मुद्रित करने के लिए प्रेषित किया जाता है।

वेद प्रकाश भटनागर,
सचिव।

Bill No. 2 of 1979.

THE HIMACHAL PRADESH CO-OPERATIVE LAND DEVELOPMENT BANKS BILL, 1979

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A
BILL

to supplement the provisions of the Himachal Pradesh Co-operative Societies Act, 1968 (Act No. 3 of 1969) in order to facilitate the working of the co-operative land development banks in the State of Himachal Pradesh with a view to providing for the grant of long term loans to owners of land or other immovable property to carry out agricultural improvements, to acquire land for the formation of economic holdings and other like purposes to enable them to discharge their debts and thereby to promote thrift and self help among them.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Thirtieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Himachal Pradesh Co-operative Land Development Banks Act, 1979.

(2) It extends to the whole of the State of Himachal Pradesh.

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

Short title,
extent and
commence-
ment.

2. In this Act, unless the context otherwise requires,—

(a) "Board" means the Board of Directors of the State Bank;

(b) "land" shall have the meaning assigned to it in clause (7) of section 2 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972;

(c) "Land Development Bank" means a Primary Land Development Bank or State Bank registered or deemed to be registered under the Himachal Pradesh Co-operative Societies Act, 1968;

(d) "Primary Land Development Bank" means a Co-operative Land Development Bank registered under the Himachal Pradesh Co-operative Societies Act, 1968 and affiliated as a member to the State Bank;

(e) "Official Gazette" means the Rajpatra, Himachal Pradesh;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "Registrar" means the person appointed by the State Government to be the Registrar of Co-operative Societies for the State of Himachal Pradesh or any person appointed by the State Government to assist the Registrar under section 3 of the Himachal Pradesh Co-operative Societies Act, 1968;

(h) "State Government" means the Government of Himachal Pradesh;

(i) "State Bank" means the Himachal Pradesh Co-operative State Land Development Bank Ltd. established for the purposes of this Act;

Definitions.

8 of 1974

3 of 1969

3 of 1969

3 of 1969

- (j) "State" means the State of Himachal Pradesh;
- (k) "trustee" means the trustee referred to in section 5 (i) of this Act;
- (l) "Collector" means the Collector of the District or such other officer not below the rank of the Assistant Collector 1st Grade as may be specially empowered by the State Government to discharge the functions of a Collector for the purposes of this Act;
- (m) "Commissioner" means the Financial Commissioner of Himachal Pradesh for the time being and includes any other officer specially empowered by the State Government to exercise the powers of Commissioner under this Act; and
- (n) "joint Hindu family" consists of all persons lineally descended from the same common ancestor, and their wives and un-married daughters.

CHAPTER II

BANKS AND LOANS

Purposes
for which
loans may
be issued.

3. The Land Development Banks shall advance loans, other than short-term loans only for the purpose hereinafter enumerated as purposes for which loans may be advanced, that is to say:—

- (i) land improvement and productive purposes;
- (ii) the erection, re-erection or repairing of houses for agricultural purposes;
- (iii) the purchase of or acquisition of title to agricultural land by tenants under any law for the time being in force in any part of the State;
- (iv) the liquidation of debts under any Act for the time being in force in any part of the State.

Explanation 1.—For the purposes of this section, short-term loan means a loan for a duration of less than 18 months.

Explanation 2.—Land improvement and productive purposes mean any work, construction or activity which adds to the productivity of the land and, in particular, include the following, that is to say:—

- (a) construction and repair of wells (including tubewells), tanks and other works for the storage, supply or distribution of water for the purpose of agriculture, or for the use of men and cattle employed in agriculture;
- (b) renewal or reconstruction of any of the foregoing works, or alterations therein, or additions thereto;
- (c) preparation of land for irrigation;
- (d) drainage, reclamation from rivers or other waters, or protection from floods or from erosion or other damage by water of land used for agricultural purposes or waste land which is culturable;
- (e) building and similar improvements;
- (f) reclamation, clearance and enclosure or permanent improvement of land for agricultural purposes;
- (g) horticulture;
- (h) purchase of oil-engines, and electrical motors for any of the purposes mentioned herein;
- (i) purchase of tractors or other agricultural machinery and implements;

- (j) increase of the productive capacity of land by addition to it of special variety of soil;
- (k) construction of permanent farm houses, cattle sheds and sheds for processing of agricultural produce at any stage;
- (l) purchase of machinery for crushing sugarcane, manufacturing gur or khandsari or sugar and other like purposes;
- (m) purchase of land under the Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971;
- (n) such other purposes as the Board, may from time to time with the approval of the Registrar, declare to be improvement or productive purpose for the purposes of this Act.

4. (1) There shall be a State Bank for the State of Himachal Pradesh, and as many Primary Land Development Banks or branches as may be deemed necessary.

Institution of Land Development Banks.

(2) A reference to Land Mortgage Bank in any law, or instrument, for the time being in force in the State shall, with effect from the commencement of this Act, be construed as a reference to a Land Development Bank within the meaning of this Act.

(3) With effect from the commencement of this Act, and until such time as the names of the Land Mortgage Banks and societies functioning in the State at the commencement of this Act are changed into Land Development Banks, all acts done by them or mortgages and other documents executed by them, or in their favour, and all suits and other proceedings filed by or against them shall be deemed to have been done, executed or filed, as the case may be, by or against them as Land Development Bank.

CHAPTER III

TRUSTEES

5. (i) The Registrar or any other person appointed by the State Government in this behalf shall be the trustee for the purposes of securing the fulfilment of the obligations of the State Bank to the holders of debentures issued by the Board.

Appointment of trustee.

(ii) The trustee shall be a corporation sole by the name of the trustee for the debentures in respect of which he is appointed, and shall have perpetual succession and a common seal, and in his corporate name may sue and be sued.

6. The mortgages and other assets deemed to have been transferred by the Primary Land Development Bank to the State Bank under section 38 shall vest in the trustee, from the date of such transfer.

Vesting of property in trustee.

7. The holders of the debentures shall have a floating charge on—

- (i) all such mortgages and assets;
- (ii) the amount paid under such mortgages and remaining in the hands of the State Bank or of the trustee; and
- (iii) the other properties of the State Bank.

Debenture-holders to have first charge on mortgages etc.

8. The powers and functions of the trustee shall be governed by the provisions of the Act and by the instrument of trust executed between the State Bank and the trustee, as modified from time to time by mutual agreement between the State Bank and the trustee.

Powers and functions of the trustee.

CHAPTER IV DEBENTURES

Issue of debentures by the Board. 9. With the previous sanction of the trustee and of the State Government, the State Bank may issue debentures of one or more denominations for such periods as it may deem expedient on the security of the mortgages and other assets transferred or deemed under the provisions of section 38 to have been transferred by the Primary Land Development Banks to the State Bank or on the security of all or any other assets and properties of the State Bank and also against the mortgages which are to be acquired or have been deemed to be acquired by the State Bank.

Redeemable period of debentures. 10. Such debentures may contain a term fixing a period of not exceeding 30 years from the date of issue during which they shall be irredeemable, or reserving to the Board the right to call in at any time any of the debentures in advance of the date fixed for redemption, after giving, to the debenture-holder concerned, not less than three months' notice in writing.

Maximum limit of debentures. 11. The total amount due on debentures issued by the Board and outstanding at any time shall not exceed,—

(a) where debentures are issued against mortgages held, the aggregate of—

(i) the amounts due on the mortgages,

(ii) the value of the properties and other assets transferred under section 38 by the Primary Land Development Banks to the State Bank and subsisting at such time, and

(iii) the amounts paid under the mortgages aforesaid and the unsecured amounts remaining in the hands of the State Bank or the trustee;

(b) where the debentures are issued otherwise than on mortgages held, the total amount as calculated under clause (a) increased by such portion of the amount obtained on the debentures as is not covered by a mortgage.

Exemption from compulsory registration of instruments. 12. Nothing in clauses (b) and (c) of sub-section (1) of section 17 of the Indian Registration Act, 1908, shall apply to,—

16 of 1908

(i) any instrument relating to shares in co-operative societies notwithstanding that the assets of the society consist in whole or in part of immovable property; or

(ii) any debenture issued by any such society and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immovable property, except in so far as it entitles the holder thereof to the security afforded by a registered instrument whereby the society has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iii) any endorsement upon or transfer of any debenture issued by any such society.

13. The principal of, and interest on, the debentures issued under section 9 shall carry the guarantee of State Government subject to such conditions as it may deem fit to impose.

Guarantee by State Government of principal and interest on debentures issued under section 9.

14. The Board may, subject to the approval of the trustee and of the State Government, make regulations not inconsistent with the provisions of this Chapter:—

Power of Board to make regulations.

- (i) for fixing the period of debentures and the rate of interest payable thereon;
- (ii) for calling in debentures after giving notice to debenture-holders;
- (iii) for the issue of new debentures in place of debentures damaged or destroyed;
- (iv) for converting one class of debentures into another bearing a different rate of interest; and
- (v) generally for carrying out the provisions of this Chapter.

CHAPTER V

GRANT OF LOANS—MODE THEREOF

15. (1) When an application for loan is made for any of the purposes mentioned in section 3, a public notice shall be given of the application in such a manner as may be prescribed calling upon all persons interested to present their objections, if any, in person, at a time and place fixed therein. The State Government may, from time to time, prescribe the officer by whom such public notice shall be given and the manner in which the objections shall be heard and disposed of.

Mode of dealing with applications for loan.

(2) The prescribed officer shall consider every objection submitted under sub-section (1) and make an order in writing either upholding or over-ruling it:

Provided that when the question raised by an objection is in the opinion of the officer, one of such a nature that it cannot satisfactorily be decided except by a civil court he shall postpone the proceedings on the application until the question has been so decided.

(3) A notice under sub-section (1), published in the manner prescribed, shall, for the purpose of this Act, be deemed to be proper notice to all persons having or claiming interest in the land to be improved, redeemed, purchased or offered as security for the loans under this Act.

(4) If any person interested, fails to appear to present his objections as required under sub-section (1) the questions at issue will be decided in his absence and such person will have no claim whatsoever against the property for which the loan applied for will be sanctioned till such time as the loan together with interest thereon or any other dues arising out of the loan are paid in full by the loanee.

(5) Notwithstanding anything contained in any other law for the time being in force in the State, a Land Development Bank shall have the right to obtain free of charge copies of Farad, Jamabandi, Khasra Girdawari, 5 years sales statistics and encumbrance certificate under section 57, prescribed in Appendix 'I' of Article II of the Indian Registration Act, 1908 on the lines to be specified by the Registrar. These copies shall, as far as

possible, be supplied by the concerned officers of the Revenue Department within 15 days from the date of request by the Land Development Bank.

Order granting loan conclusive of certain matters.

16. A written order by the Land Development Bank, or committees authorised under the bye-laws of the Bank to make loans for all or any of the purposes specified in section 3, granting, either before or after the commencement of this Act, a loan to or with the consent of a person mentioned therein, for the purpose of carrying out the work specified therein for the benefit of the land or for the productive purposes specified therein, shall for the purposes of this Act be conclusive of the following matters, that is to say:—

- (a) that the work described or the purpose for which the loan is granted, is an improvement or productive purpose, as the case may be, within the meaning of section 3;
- (b) that the person had at the date of the order a right to make such an improvement, or to incur expenditure for productive purpose, as the case may be; and
- (c) that the improvement is one benefiting the land specified and productive concerns the land offered in security, or any part thereof as may be relevant.

The Land Development Bank to have prior charge on land.

17. Notwithstanding anything contained in any law for the time being in force in the State, where a mortgage in favour of Land Development Bank is in respect of land in which a tenant purchaser or tenant has an interest, the mortgage may be against the security of such interest, and the rights of the mortgagee shall not be affected by the failure of the tenant purchaser or tenant to comply with the requirements of such law and the sale of the land and his interest therein under such law shall be subject to the prior charge of the Land Development Bank.

Registration of mortgage (or lease) in favour of Land Development Banks.

18. Notwithstanding anything contained in the Indian Registration Act, 1908 it shall not be necessary to register mortgages (or leases) executed in favour of the Land Development Banks, provided that the Land Development Bank concerned sends, within such time and in such manner as may be prescribed, a copy of the instrument whereby property is mortgaged or leased to the Registering Officer within the local limits of whose jurisdiction the whole or any part of the property mortgaged (or, as the case may be leased) is situate, and such Registering Officer shall file a copy or copies, as the case may be, in his Book No. 1 prescribed under section 51 of the Indian Registration Act, 1908.

Section 8 of Act XXXII of 1956 to apply to mortgages to Land Development Banks subject to modifications.

19. Section 8 of the Hindu Minority and Guardianship Act, 1956 shall apply to mortgages in favour of the Land Development Bank subject to modifications that reference to the court therein shall be construed as reference to the Collector of the District in which the property to be mortgaged is situated or his nominee and the appeal against the order of the Collector or his nominee shall lie to the Commissioner.

20. (1) Notwithstanding anything contained in the Transfer of Property Act, 1882, or any other law for the time being in force, no mortgagor of property mortgaged to a Land Development Bank shall except with the prior consent in writing of the Bank and subject to such terms and conditions as the Bank may impose, lease or create any tenancy rights on any such property:

Restriction on lease.

Provided that, if the lease is given or the tenancy is created with the prior consent of the Bank, the rights of the Bank shall also be enforceable against the purchaser, the lessee or the tenant, as the case may be, as if he himself were a mortgagor.

(2) Where land, mortgaged with possession to a Land Development Bank, is in actual possession of tenant, the mortgagor or the Land Development Bank shall give notice to the tenant to pay rent to the Land Development Bank during the currency of the lease and the mortgage and on such notice being given, the tenant shall be deemed to have attorned to the Land Development Bank.

21. Notwithstanding anything contained in section 38 all moneys due under the mortgage shall unless otherwise directed by the State Bank or the trustee, and communicated to the mortgagor be payable by the mortgagor to the Land Development Bank and such payments shall be as valid as if the mortgage had not been so transferred and the Land Development Bank shall, in the absence of specific direction to the contrary issued by the State Bank or trustee and communicated to the Bank, be entitled to sue on the mortgage or take any other proceedings for the recovery of the moneys due under the mortgage.

Land Development Bank to receive money and give discharge.

22. Where any property mortgaged to a Land Development Bank is wholly or partially destroyed, or for any reason the security is rendered insufficient and the mortgagor having been given a reasonable opportunity by the Board or the committee of the Land Development Bank, as the case may be, to provide further security enough to render the whole security sufficient, or to repay such portion of the loan as may be determined by the Bank, has failed to provide such security, or to repay such portion of the loan, the whole of the loan shall be deemed to fall due at once; and the Board or the committee, as the case may be, shall be entitled to take action against the mortgagor under this Act.

Powers of Land Development Bank where mortgaged property is destroyed or security becomes insufficient.

Explanation.—Security shall be deemed insufficient within the meaning of this section, unless the value of the mortgaged property (including improvement made thereon) exceeds the amount for the time being due on the mortgage by such proportion as may be specified in the regulations made by the Board.

CHAPTER VI DISTRAINT AND SALE OF PRODUCE

23. (1) If any instalment payable under a mortgage executed in favour of or transferred or deemed to be transferred under section 38 to the State Bank or any part of such instalment has remained unpaid for more than one month from the date on which it fell due, the Board may, in addition to any other remedy available to the Bank, apply to the Registrar, for the recovery of such instalment or part thereof by distraint and sale of the produce of the mortgaged land including the standing crops thereon; provided that such crops belong to the mortgagor or mortgagors, as the case may be.

Distraint when to be made.

(2) On receipt of such application, the Registrar may notwithstanding anything contained in the Transfer of Property Act, 1882, or any other law for the time being in force, take such action as is necessary to distrain and sell such produce:

4 of 1882

Provided that no distraint shall be made after the expiry of twelve months from the date on which the instalment fell due.

(3) The distress shall not be excessive, the value of the property distrained shall be, as nearly as possible, equal to the amount due and the expenses of the distraint and the cost of the sale. Any mistake, defect or irregularity in this respect shall not invalidate a distraint or sale made under this Act.

Distraint
how to be
effected.

24. (1) Before or at the time when a distraint is made under section 23, the distrainer shall serve or cause to be served upon the defaulter written demand specifying the amount for which the distraint is made.

(2) The demand shall be dated and signed by the distrainer and shall be served upon the defaulter by delivering a copy to him or to some adult male member of his family at his usual place of abode or to his authorised agent, or when such service cannot be effected, by affixing a copy of the demand on some conspicuous part of his abode and of his land.

Sale of
property
distrained.

25. (1) If, within fifteen days from the date of service of the demand referred to in section 24, the defaulter does not pay the amount for which the distraint was effected, the distrainer may sell in auction the distrained property or such part thereof as may in his opinion be necessary to satisfy the demand together with the expenses of the distraint and cost of the sale.

(2) From the proceeds of such sale, a deduction shall be made at a rate not exceeding 5 paise in a rupee on account of the cost of the sale.

(3) From the balance shall be deducted the expenses incurred by the distrainer on account of the distraint.

(4) The remainder, if any, shall be applied to the discharge of the amount for which distraint was made.

(5) The surplus, if any, shall be delivered to the person whose property has been sold and he shall be given a receipt for the amount discharged from the proceeds of sale.

CHAPTER VII

SALE OF MORTGAGED PROPERTY

Power of
sale when
to be
exercised.

26. (1) Notwithstanding anything contained in the Transfer of Property Act, 1882, or any other law for the time being in force, where a power of sale without the intervention of the court is expressly conferred on the State Bank by the mortgage deed, the Board or any person authorised by such Board, in this behalf shall, in case of default of payment of the mortgage money or any part thereof, have power, in addition to any other remedy available to the State Bank, to bring the mortgaged property to sale without the intervention of the court.

4 of 1882

(2) No such power shall be exercised unless and until—

(a) the board has previously authorised the exercise of the power conferred by sub-section (1), after hearing and deciding the objections, if any, of the mortgagor or any other person having any interest in the mortgaged property;

(b) notice in writing requiring payment of such mortgage money or part has been served upon—

(i) the mortgagor or each of the mortgagors;

- (ii) any person who has any interest in or charge upon the property mortgaged or in or upon the right to redeem the same;
- (iii) any surety for the payment of the mortgage debt or any part thereof; and
- (iv) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property;
- (c) default has been made in payment of such mortgage money or part for six months after such service; and
- (d) the Registrar, in case where the amount claimed by the State Bank is disputed, has certified that the amount claimed or lesser amount is due from the mortgagor.

27. (1) In exercise of the power of sale conferred by section 26, the Board or any person duly authorised by the Board, may apply to the sale officer appointed in that behalf under section 35 to sell the mortgaged property or any part thereof and such officer shall, after giving notice in writing to all the persons referred to in section 26, sell such property in the manner prescribed subject to any previous charge on the basis of registered deed.

Application for sale and manner of sale.

(2) The sale shall be by public auction and shall be held in the village where the mortgaged property is situated or at the nearest place of public resort if the sale officer is of the opinion that the property is likely to be sold to better advantage there.

(3) The Registrar may set aside a sale on the application of the mortgagor or any other person interested in the mortgaged property, presented to him within 30 days of the sale, if in his opinion there has been an illegality or material irregularity in conducting the sale.

(4) On the sale being set aside by the Registrar under sub-section (3) fresh sale shall be conducted in accordance with provisions of this Chapter.

28. (1) When a mortgaged property has been sold under this Chapter, the mortgagor or any person having right or interest therein affected by the sale, may, at any time, within thirty days from the date of sale, apply to the Board to have the sale set aside on his depositing at the office of the State Bank—

Application to set aside sale on deposit and confirmation of sale in default or on dismissal of such application.

(a) for payment, to the said Bank, the amount specified in the proclamation of sale together with subsequent interest and the cost, if any, incurred by the Bank in bringing the property to sale; and

(b) for payment to the purchaser, a sum equal to two per cent of the purchase money.

(2) If such deposit is made, the Board shall make an order setting aside the sale.

(3) Where no application is made under sub-section (1) or where such application is made and disallowed, the Board shall apply to the Registrar to make an order confirming the sale and on such officer confirming the sale, it shall become absolute.

29. (1) The proceeds of every sale under this Chapter shall be applied by the sale officer, first in payment of all costs, charges and expenses properly incurred by him as incidental to the sale or any attempted sale determined in the prescribed manner; secondly in payment of all interest due on account of the mortgage in consequence whereof the mortgaged

Distribution of the proceeds of sale.

property was sold; thirdly in payment of the principal money due on account of the mortgage; and lastly, the residue, if any, shall be paid to the person proving himself interested in the property sold, or, if there are more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

(2) (a) Any person dissatisfied with the decision of the sale officer in regard to the distribution of such residue may, within thirty days of the communication to him of such decision, institute a suit in a court to establish the right he claims.

(b) The sale officer shall not distribute such residue until thirty days have elapsed from communication of his decision to all the persons concerned, or if a suit has been instituted within the said period of thirty days by any such person, until the suit is disposed of or otherwise than in accordance with the decision of the court therein.

Explanation.—In this sub-section court means the civil court which would have jurisdiction to entertain a suit to enforce the mortgage and within the limits of whose jurisdiction the property sold is situated.

Certificate
to purchaser.

30. Where a sale of mortgaged property has become absolute, the sale officer shall grant a certificate specifying the property sold and the name of the person who at the time of the sale is declared to be purchaser. Such certificate shall bear date, the day on which the sale became absolute.

Delivery of
property to
purchaser.

31. (1) Where the mortgaged property sold is in the occupation of the mortgagor or of some person on his behalf or of some person claiming under a title other than a lease for a period not exceeding five years created by the mortgagor subsequent to the mortgage in favour of the State Bank and a certificate in respect thereof has been granted under section 30, the Collector shall, on the application of the purchaser, order delivery to be made by putting such purchaser, or any person, whom he may appoint to receive delivery on his behalf, in possession of the property.

(2) Where the property sold is in the occupation of a tenant or other person entitled to occupy the same and certificate in respect thereof has been granted under section 30, the Collector shall on the application of the purchaser and after notice to such tenant or other person, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place that the interest of the mortgagor has been transferred to the purchaser.

(3) In regard to the cases dealt within the sub-sections (1) and (2) the provisions of rules 97 to 103 of order XXI of the First Schedule to the Code of Civil Procedure, 1908, shall, *mutatis mutandis* and so far as may be, apply.

Right of
Land Deve-
lopment
Bank to
purchase
the mort-
gaged
property at
sale.

32. Notwithstanding anything contained in any law for the time being in force, including a law imposing a ceiling on agricultural holdings, it shall be lawful for the Land Development Bank to purchase any mortgaged property sold under this Chapter, and the property so purchased shall be disposed of by such Bank by sale within such period as may be fixed by the Board.

33. (1) The Board may, on its own motion, or in the case of mortgages executed in favour of the Land Development Banks on the application of such banks and under circumstances in which the power of sale conferred by section 26 may be exercised, appoint in writing a receiver of the produce and income of the mortgaged property or any part thereof and such receiver shall be entitled either to take possession of the property or collect its produce and income, as the case may be, to retain out of any money realised by him his expenses of management including his remuneration, if any, as fixed by the Board, and to apply the balance in accordance with the provisions of sub-section (8) of section 69-A of the Transfer of Property Act, 1882.

Appoint-
ment of
receiver
and his
powers.

(2) A receiver appointed under sub-section (1) may, for sufficient cause and on application made by the mortgagor, be removed by the Board.

(3) A vacancy in the office of the receiver may be filled up by the Board.

(4) Nothing in this section shall empower the Board to appoint receiver where the mortgaged property is already in the possession of a receiver appointed by a civil court.

34. When a sale purported to have been made in exercise of the power of sale given by section 26 has been confirmed under sub-section (3) of section 28, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale or that due notice was not given or that the power was otherwise improperly or irregularly exercised but any person damnified by a unauthorised or improper or irregular exercise of the power shall have his remedy in damages against the Land Development Bank.

Title of
purchaser
not to be
impeached
on the
ground of
irregularity
etc.

35. The State Government may appoint any officer to be a sale officer for the purpose of conducting sales under this Chapter.

Appoint-
ment of
sale
officers.

36. (1) Without prejudice to any other remedy available to a Land Development Bank for recoveries of arrears of any sum advanced by it to any of its members and on its furnishing a statement of accounts in respect of the arrears, the Registrar may, after making such enquiries as he deems fit, grant a certificate for the recovery of the amount stated therein to be due as arrears.

Recovery
of loans
on certifi-
cate by
Registrar.

(2) A certificate by the Registrar under sub-section (1) shall be final and conclusive as to the arrears due. The arrears stated to be due therein shall be recoverable according to the law for the time being in force for the recovery of arrears of land revenue.

(3) It shall be lawful for the Collector to take any precautionary measures provided in the law for the time being in force for the recovery of arrears of land revenue until the arrears due to the Land Development Bank together with interest and any incidental charges incurred in the recovery of such arrears are paid or security of such arrears is furnished to the satisfaction of the Registrar.

(4) it shall be competent for the Registrar or a person authorised by him in this behalf to direct conditional attachment of the property of the mortgagor until the arrears due to the Land Development Bank together with interest and any incidental charges incurred in recovery of such arrears, are paid or security for payment of such arrears, is furnished to the satisfaction

of the Registrar and the provisions of section 74 of the Himachal Pradesh Co-operative Societies Act, 1968, shall apply *mutatis mutandis* to conditional attachment of any property made or to be made under this section.

3 of 1969

Collector to make recoveries during a certain period.

37. (1) During such period as the State Government may by general or special order notify in the Official Gazette, it shall be competent for the Collector, on application being made to him in that behalf by a Land Development Bank, to recover all sums due to the Land Development Bank (including the cost of such recovery).

(2) Any amount due to a Land Development Bank shall be recoverable by the Collector or any officer specially authorised by the Collector in this behalf, in all or any of the following modes, namely:—

- (a) from the borrower—as if they were arrears of land revenue due by him;
- (b) out of the land for the benefit of which the loan has been granted—as if they were arrears of land revenue due in respect of that land;
- (c) from a surety (if any)—as if they were arrears of land revenue due by him;
- (d) out of the property comprised in the collateral security (if any) according to the procedure for the realisation of land revenue by the sale of immovable property other than the land on which the revenue is due.

CHAPTER VIII

MISCELLANEOUS

Mortgages executed in favour and other assets of Primary Land Development Banks to stand transferred to State Bank.

38. The mortgages executed in favour of, and all other assets transferred to, Primary Land Development Bank by the members thereof, shall with effect from the date of such execution or transfer, be deemed to have been transferred by such Primary Land Development Bank to the State Bank.

Power of Board of trustee to direct distraint and sale of produce and the sale of the mortgaged property, etc.

39. (1) The Board or trustee may direct the committee of a Primary Land Development Bank to take action against a defaulter under section 23, or section 26 and if the committee neglects or fails to do so, the Board or the trustee may take such action.

(2) (a) Where such action is taken by the Board, the provisions of this Act and of any rules or regulations made thereunder shall apply in respect thereto as if all references to the Primary Land Development Bank and to its committee in the said provisions were references to the State Bank and the Board respectively.

(b) Where such action is taken by the trustee, the provisions of this Act and of any rules or regulations made thereunder shall apply in respect thereto as if all references to the Land Development Bank or to its committee in the said provisions were references to the trustee.

Mortgage not to be questioned on insolvency of mortgagor.

40. Notwithstanding anything contained in the Provincial Insolvency Act, 1920, a mortgage executed in favour of the Development Bank shall not be called in question on the ground that it was not executed in good faith for valuable consideration or on the ground that it was executed in order to give the Land Development Bank a preference over the other creditors of the mortgagor.

5 of 1920

41. A mortgage executed in favour of the Land Development Bank after the commencement of this Act shall have priority over any claim of the Government arising from a loan under the Land Improvement Loans Act, 1883, or any other law for the time being in force in the State, granted after the execution of the mortgage.

Priority of mortgage over claims arising under the Land Improvement Loans Act, 1883.

42. (1) Where a mortgage is executed in favour of the Land Development Bank for payment of prior debts of the mortgagor the bank may notwithstanding the provisions of sections 83 and 84 of the Transfer of Property Act, 1882, by notice in writing require any person to whom any such debt is due to receive payment of such debt or part thereof from the Land Development Bank at its registered office within such period as may be specified in the notice. If any such person fails to receive such notice or such payment, such debt or part thereof, as the case may be, shall cease to carry interest from the expiration of the period specified in the notice:

Right of Land Development Bank to pay prior debts of the mortgagor.

Provided that where there is a dispute as regards the amount of any such debt, the person to whom such debt is due, shall be bound to receive payment of the amount offered by the Land Development Bank towards the debt, but such receipt shall not prejudice the right, if any, of such person, to recover the balance claimed by him.

43. (1) Subject to such restrictions, limitations and conditions as may be prescribed, the Registrar and persons subordinate to the Registrar, who are authorised by him in this behalf by general or special order in writing, or officers of Land Development Banks which are registered or deemed to be registered under the Himachal Pradesh Co-operative Societies Act, 1968, as the State Government may, by notification in the the Official Gazette, authorise in this behalf, shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908 when trying a suit, in respect of the following matters, namely:—

Power to summon witnesses and requisition documents.

- (a) enforcing the attendance of any person and examining him on oath or affirmation;
- (b) compelling the production of documents; and
- (c) issuing commissions for the examination of witnesses.

(2) Any of the officers or persons authorised by or under sub-section (1) may require any person(s) present before him, to furnish any information or to produce any document then and there in his (or their) possession or power.

(3) Any officer or person before whom any document is produced under sub-section (1) or sub-section (2) shall have power to take, or to authorise, the taking of, such copies of document of any entries therein as such officer or person may consider necessary. Copies so taken shall, when certified in such manner as may be prescribed, be admissible in evidence for any purpose in the same manner and to the same extent as the original document or entries therein, as the case may be.

(4) (a) Any person who wilfully or without reasonable excuse disobeys any summons, requisition or order issued under sub-section (1) or sub-section (2) shall be punishable with fine which may extend to fifty rupees, and in the case of a continuing disobedience with an additional fine which may extend to five rupees for every day during which such disobedience continues after conviction for the last such disobedience.

19 of 1883

4 of 1882

3 of 1969

5 of 1908

(b) No court inferior to that of a Magistrate of the First Class shall try any offence punishable under clause (a).

(c) Every offence under clause (a) shall, for the purpose of the Code of Criminal Procedure, 1973, be deemed to be non-cognizable.

2 of 1974

(d) No prosecution shall be instituted under clause (a) without the previous sanction of the Registrar, who will accord such sanction only after giving the party concerned an opportunity to be heard.

Registration of documents executed on behalf of a Land Development Bank.

44. (1) Notwithstanding anything contained in the Indian Registration Act, 1908, it shall not be necessary for any Director, Secretary or other officer of a Land Development Bank to appear in person or by agent at any registration office in any proceeding connected with the registration of any instrument executed by him in his official capacity or to sign as provided in section 58 of that Act.

16 of 1908

(2) Where any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he thinks fit, refer to such Director, Secretary or Officer for information respecting the same, and on being satisfied of the execution thereof, shall register the instrument.

Special provisions for mortgages executed by managers of joint Hindu family.

45. (1) Notwithstanding anything contained in any law for the time being in force, the mortgages in respect of loans by the Land Development Banks either before or after commencement of this Act by the manager of joint Hindu family for the improvement of agricultural land or other purposes enumerated in this Act shall be binding on every member of such joint Hindu family.

(2) Where a mortgage executed in favour of the Land Development Bank is called in question on the ground that it was executed by a person governed by a custom or the manager of a joint Hindu family for a purpose not binding on the reversioners and the members thereof, whether major or minor, the burden of proving the same shall, notwithstanding any law to the contrary, be on the party raising it.

Proof of documents or entries in documents.

46. The Primary Land Development Bank or the State Bank may grant copies of any document obtained and kept by it in the course of its business or of any entries in such documents; and any copy so granted shall, when certified in such manner as may be prescribed, be admissible in evidence for any purpose in the same manner and to the same extent as the original document, or the entries therein, as the case may be.

Service of notice under the Act.

47. Whenever under the provisions of this Act any notice is required to be given to any person in writing, it shall be sufficient to send such notice by registered post at his last known address.

Officers of the Land Development Banks and sale officers not to bid at sale.

48. (1) At any sale of movable or immovable property held under the provisions of this Act in order to recover any money due to a Land Development Bank, no Director, Secretary or other officer of such bank (except on behalf of the bank of which he is Director, Secretary or officer) and no sale officer or other person having any duty to perform in connection with such sale, shall, either directly or indirectly, bid for or acquire or attempt to acquire any interest in such property.

(2) Every person contravening the provisions of the foregoing subsection (1) shall, on conviction, be punished with fine which may extend to five hundred rupees.

(3) No prosecution under this section shall be lodged, except with the previous sanction of Registrar.

49. The Board may, if it thinks fit, delegate all or any of its powers under sections 3, 16, 23, 24, 27, 33, 37, 39 and 42 to an executive committee constituted by it and consisting of two or more of its members.

Delegation of certain powers by Board.

50. Notwithstanding anything contained in the Himachal Pradesh Co-operative Societies Act, 1968, or the rules made thereunder, the Board shall have a general power of supervision over the Primary Land Development Banks and may make regulations not inconsistent with this Act or the rules made thereunder—

Powers of Board to make regulations.

(a) for the inspection of the account books and proceedings of Primary Land Development Banks;

(b) for the submission of returns and reports by Primary Land Development Banks in respect of their transactions;

(c) for the periodical settlement of accounts between Primary Land Development Banks and the State Bank and for the payment of the amounts recovered by Primary Land Development Banks and on mortgages transferred to the State Bank;

(d) prescribing the form in which application to a Land Development Bank for loans should be made and for the valuation of the properties offered as security for such loan;

(e) prescribing the proportions by which the value of the mortgaged property should exceed the amount for the time being due on the mortgages for security to be sufficient within the meaning of explanation under section 22;

(f) for the maintenance and utilisation of guarantee funds;

(g) for the investment of moneys realised from the mortgagors; and

(h) generally for the purpose of safeguarding the interest of the parties concerned and for carrying out the purposes of this Act.

51. The provisions of Chapters VI, VII and VIII shall apply *mutatis mutandis* to all Primary Land Development Banks as they apply to the State Bank with the modification that reference there to State Bank and Board shall be construed as reference to Primary Land Development Banks and committee respectively.

Primary Land Development Banks.

52. (1) It shall be competent for the State Government to constitute one or more guarantee funds on such terms and conditions as it may fit, for the purpose of meeting losses that might arise as a result of loans being made by the Land Development Banks on titles to immovable property subsequently found to be defective or for any other purpose under this Act for which in the opinion of the State Government, it is necessary to provide for or create as separate guarantee fund.

Provisions for guarantee fund to meet certain losses.

(2) The State Bank and the Primary Land Development Banks shall contribute to such funds at such rate as may be prescribed, and the maintenance and utilisation of such funds shall be governed by such regulations as may be made by the Board in this behalf.

Remission
of fees.

53. No fee shall be chargeable in respect of registration of any instrument executed in favour of the Land Development Bank by any of its officers or members, under any law for the time being in force in the State.

Registrar's
power to
permit any
co-operative
bank to
function as
a Land
Develop-
ment Bank.

54. It shall be competent for the Registrar to permit any co-operative bank to function as a Land Development Bank under such terms and conditions and for such period as he may deem fit.

Power of
State Govern-
ment to
make rules.

55. (1) The State Government may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

- (i) the manner of effecting distraint;
- (ii) the custody, preservation and the sale of distrained property;
- (iii) the investigation of claims by persons other than the defaulters, to any right or interest in the distrained property; and the postponement of the sale pending such investigation;
- (iv) immediate sale of perishable articles;
- (v) the due proclamation and the conduct of sale;
- (vi) the deposit of the purchase money;
- (vii) the resale of the property, if the purchase money is not deposited;
- (viii) the recovery of expenses of the proclamation;
- (ix) the manner of giving public notice of the application of the loan;
- (x) the person competent to give public notice;
- (xi) the manner of hearing and disposing of objections in regard to application of loan;
- (xii) the rate at which the State Bank and the Primary Land Development Banks shall contribute to the guarantee fund.

(3) All rules made by the State Government under this section shall be laid before the Legislative Assembly as soon as may be after they are made.

Repeal.

56. The Punjab Co-operative Land Mortgage Banks Act, 1957, as in force in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966, and the Punjab Co-operative Land Mortgage Banks Act, 1957, as in force in the areas which comprised in Himachal Pradesh immediately before the 1st November, 1966 are hereby repealed.

26 of 1957

31 of 1966

26 of 1957

Saving.

57. The repeal of the Acts by section 56 shall not affect—

- (a) the previous operation of the said Acts or anything duly done or suffered thereunder; or
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under the said Act; or
- (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the said Act; or
- (d) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment, as aforesaid; and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and such penalty, forfeiture or punishment may be imposed as if the said Acts had not been repealed.

STATEMENT OF OBJECTS AND REASONS

As a result of the re-organisation of the Punjab, certain areas have been transferred to Himachal Pradesh, under the Punjab Re-organisation Act, 1966. In the areas newly merged with Himachal Pradesh, which were previously forming a part of Punjab State, the Punjab Co-operative Land Mortgage Act, 1957, is in force. Similarly in the old areas of Himachal Pradesh, the Banks are functioning under the same Act but with a few modifications and this modified Act was extended to this territory in the year 1961. Minor adjustments in this law might have brought about uniformity in the law for the time being in force but for difficulties being felt by the Himachal Pradesh Central Land Mortgage Bank in its day to day functioning and developments in the Land Development Banking during the last twenty-one years it was thought expedient to bring forth a new legislation to govern Land Development Banks in Himachal Pradesh. For this purpose Bill No. 18 of 1976 was introduced in the previous Legislative Assembly which with the dissolution of the previous Legislative Assembly was elapsed under clause (5) of Article 196 of the Constitution of India. Now a new Bill is required to be moved in the State Legislative Assembly.

This Bill seeks to achieve the aforesaid object.

SHANTA KUMAR,
Chief Minister.

SIMLA:

The 26th March, 1979.

FINANCIAL MEMORANDUM

The Bill does not involve any financial implication other than those already provided in the existing Punjab Co-operative Land Mortgage Banks Act, 1957 as operative in the areas added to Himachal Pradesh on 1-11-1966 as well as in the areas which constituted the Pradesh before 1-11-1966. However, Clause 13 of the proposed Bill seeks to substitute the words "Central Government" appearing in section 10 of the aforesaid Act as extended to the then Union territory of Himachal Pradesh.

This has been done on the recommendations of the Government of India *vide* their letter No. 16/60/73-Jud1, dated the 11th December, 1973 that it should be done because now Himachal Pradesh is a full-fledged State.

Since the State Government has to stand guarantee, it has to be responsible for any adverse eventuality. Thus Clause 13 lays contingent liability on the State Government.

Clause 52 (1) of the proposed Bill aims at providing one or more guarantee funds by the State Government, "for the purpose of meeting losses that might arise as a result of loans being made by the Land Development Banks on the titles to immovable property subsequently found to be defective" or "for any other purpose under this Act for which in the opinion of the State Government, it is necessary to provide for or create a separate guarantee fund".

But this is only an enabling provision and the financial requirement cannot be exactly determined now. Very tentatively the estimated figure is put as Rs. 2.00 lacs of non-recurring nature and Rs. 10,000/- only of annual recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 55 empowers the State Government to make rules in respect of the matters enumerated therein. The proposed delegation is normal in character.

RECOMMENDATIONS OF THE GOVERNOR UNDER ARTICLE 207 OF THE CONSTITUTION OF INDIA

[The Co-operative Department File No. 7-41/69-Co-op (Sectt)].

The Governor of Himachal Pradesh having been informed of the subject matter of the Himachal Pradesh Co-operative Land Development Banks Bill, 1979 recommends under Article 207 of the Constitution, the introduction and consideration of the Bill in the Legislative Assembly.